

MAIN TRENDS OF THE CHANGES OF THE LEGAL REGULATION ON MUNICIPAL ORGANIZATIONS IN THE LAST DECADES

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The content and the administration of the local self-government forms – which have emerged during the era of the bourgeois revolutions¹ in the European countries – have been changed in the last decades. The main reason of the often radical transformation of the old structure can be identified as the challenges of these systems.

First of all, the role of the state – and within the local communities – has been radically altered since the bourgeois revolutions. The former liberal, ‘*night-watchman state*’ has been replaced by the modern and post-modern welfare state, and the ‘*service state*’ resulted the increasing service organizing and providing role of the public bodies. Thus the service management became a complex, and often major task of the municipalities.² These new emerging tasks should be performed in appropriate quality and *effective*. These efforts appeared in the idea of the *effective state and public administration*.³ Contrary to the need for an effective state – partly as a counterpoint of the public perceptions of the dictatorial regimes of the 20th century – the democratic administration has become a central element of the modern local administration systems. Therefore the municipal regulation of these countries is between the Scylla of local democracy and the Charybdis of effectiveness.

The European and Northern American local government models have tried to ensure simultaneously this two – often contradictorily or seemingly contradictorily – approach. My article tries to review the main challenges

¹ See FÖLDI András, ‘*Összehasonlító jogtörténet*’ [Comparative Legal History], Budapest: ELTE Eötvös Kiadó, 2012, p. 247.

² See Alfons GERN, ‘*Deutsches Kommunalrecht*’ [German Municipal Law], Baden – Baden: Nomos, 2003, p. 50.

³ See LÖRINCZ Lajos, ‘A hatékony állam’ [The Effective State]. In: *Magyar Közigazgatás*, 2005. no. 8., pp. 449-450.

of the last decades on the local government systems and the impact of these challenges on the organization of the municipalities.

I. Challenges for local government in the last decades

Since the mid 20th century the various municipal systems has been challenged. The answers to these challenges have belonged to the territory of the organizational law. At first I would like to look after the causes of organizational changes by the review of these phenomena.

1) The starting point of the changes: ‘Les Trente Glorieuses’

The beginning of the transformation of the traditional local government system was the emerging of the welfare state. The first welfare (providing) functions of the municipalities appeared in the first half of the 20th century in Western Europe and in the United States of America. The organizational effect of these changes was particularly significant in the US where the municipal executive was strengthened. As a result of this changes either the political leadership of the mayor emerged by the strong mayor form⁴ or the professional leadership was strengthened by the council-manager form.⁵

The radical expansion of the services provided by the states – and within the states by the municipalities – was completed after the formation of the Western welfare states after the Second World War. The period of about three decades after the reconstruction of the World War – which was supported by American aid (Marshall Plan) – could be characterized by a steady and rapid economic and population (baby-boom) growth in the Western and Central European democracies. Keynesian economic policy was prevalent in these countries although the intensity of the influence of

⁴ See Robert B. DENHARDT and Janet V. DENHARDT, ‘*Public Administration. An Action Orientation*’, Belmont (CA): Thomson Wadsworth, 2009, pp. 43-44.

⁵ See Ann O’M. BOWMAN and Richard KEARNEY, ‘*State and Local Government*’, Belmont (CA): Wadsworth – Cengage Learning, 2012, pp. 262-263.

the Keynesian ideas was differently. Thus the scope of the public services has effectively expanded.⁶

This transformation has been a major challenge. The expansion of the municipal functions has been caused by the build-up of the welfare states, because the effective and grassroots framework of these benefits has been the local communities. Thus a significant expansion of the local government functions has been observed since the 1950s.⁷

The traditional organizational framework of the local government administration was apart by the increasing local government functions because the laymen leadership and the strong supervisory role of the central government did not provide enough capacity for an effective administration.⁸

Therefore the organizational reforms of this era were multidirectional. For a more flexible and adaptive service provision system the supervisory (and in the traditional Napoleonic systems guardianship) role of the central government was weakened. Thus in several states – for example in Austria⁹ – the self-government of the settlements was recognized by the national constitutions and the supervision of the central governments has diminished.¹⁰

The other direction of the municipal organizational reform was the *integration (concentration) tendencies* on the settlement level for building-up an effective provision of the increased and transformed local government

⁶ John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, Introduction. In: John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, 'Oxford Handbook of Local and Regional Democracy in Europe', Oxford: Oxford University Press, 2011, p. 3.

⁷ This process could be observed in Western Germany: the social state (*der soziale Rechtsstaat*) caused the renaissance of the local self-government. By this transformation the local government functions have significantly expanded. See Alfons GERN, op. cit., p. 52.

⁸ See Gérard MARCOU and Imre VEREBÉLYI, 'New Trends in Local Government in Western and Eastern Europe', Brussels: International Institute of Administrative Sciences, 1993, pp. 241-242.

⁹ See Hans NEUHOFFER, 'Gemeinderecht', Wien – New York: Springer Verlag, 1998, p. 11-12.

¹⁰ Thus in France the decree of 14th March 1964 diminished the influence of the prefect on the municipalities by the redefinition of the roles of the prefect. See Paul BERNARD, 'L'État et la décentralisation. Du préfet au commissaire de la République.' [The State and the decentralization. The Prefect Commissioner of the Republic], Paris: La Documentation française, 1984, p. 47.

functions. In several states the fragmented settlement network was converted. These countries rejected the principle of ‘*one settlement – one local government*’ and integrated municipal units were evolved which could perform the new scopes. The most radical changes were taken place in the Nordic (Scandinavian) countries, where the number of the municipalities was reduced sometimes to the tenth.¹¹ Other countries have chosen this integration of the settlement-level units although the concentration was not as radical as in Scandinavia. Thus a significant consolidation of the settlements has occurred in the former Western Germany in the 1960s and 1970s.¹² The integration tendencies could be observed in those countries which did not merge the settlements. In these countries the forms of the inter-municipal have evolved and strengthened.¹³

As a part of the integration tendencies the system of the *intermediate level local government* was renewed in several states. Typically the number of the intermediate level units was reduced.¹⁴ Those changes had greater significance which caused the formation of a new (upper) intermediate local government level, the *region* in several European countries.¹⁵

¹¹ In Sweden 2000 municipalities were in 1944, nowadays there are only 290 units. In Norway there are 430 municipalities, and in Denmark the number of the municipalities was reduced to 98. See Stig STRÖNHOLM, ‘*An Introduction to Swedish Law*’, Deventer – Boston – Antwerpen – Frankfurt: Kluwer 1981, p. 91., Harald BALDERSHEIM and Lawrence E. ROSE, Norway: The Decline of Subnational Democracy. In: John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, ‘*Oxford Handbook of Local and Regional Democracy in Europe*’, Oxford: Oxford University Press, 2011, pp. 286-287. and Jens BLOM-HANSEN and Anne HEEGER, Denmark: ‘*Between Local Democracy and Implementing Agency of the Welfare State*’, 2011, pp. 225-226.

¹² The number of the Western German municipalities (*Gemeinde*) was reduced from 24 078 to 8 506 in the 1960s and 1970s. See Alfons GERN, op. cit., p. 150.

¹³ Thus in France the inter-communal syndicates (*syndicats intercommunaux*) – which have existed since the end of the 19th century – was strengthened during the 1950s and 1960s, and for the special problems of the urban agglomerations a new type of inter-municipal association, the urban community (*communautés urbaines – CU*) was formed in 1964. See Alain GUENGANT and Yvon ROCABOY, ‘Structural Reform in France’. In: Bryan E. Dollery and Lorenzo Robotti, ‘*The Theory and Practice of Local Government Reform*’, Cheltenham (UK) – Northampton (MA): Edward Elgar Publishing, 2008, pp. 142-143.

¹⁴ For example in Western Germany where – parallel with the merging of the settlements – the number of the counties (*Kreise*) was reduced from 425 to 237 and the number of the county-level cities (*kreisfrei Städte*) was reduced from 236 to 91. See Alfons GERN, op. cit., p. 150.

¹⁵ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 240.

These alterations of the local government systems based the amendments of the new reform wave of the 1980s, although those reforms tried to answer other challenges, as well.

2) Challenges on the local government systems in the 1980s

Several changes affected on the local government systems, and these changes induced organizational transformations, as well. These transformations will be reviewed on the next pages.

The '*starting point*' of the alteration of the local government systems was the end of the era of the '*Les Trentes Glorieuses*' ('*The Glorious Thirty*'). The collapse of the Bretton Woods monetary system and the economic difficulties after the oil crisis in 1973 caused the breakdown of the former Keynesian economic policies of the Western democracies. The neoliberal critics of this policy – which was drafted by the New Right – strengthened.¹⁶ The New Public Management (NPM) reforms were based on these critics.

Several new challenges – which needed for answers – were resulted by the NPM reforms themselves. Thus several theories evolved during the 1990s and 2000s which tried to correct the problematic elements of the NPM reforms. Among these theories the *Public Choices* and the *Good Governance* models have impacted on the local government reforms of the millennium.

In the following the main challenges on the municipal systems will be presented. Different solutions were resulted, and the municipal organization has been significantly altered by these answers.

a) The challenges caused by the transformation of the (public) service systems

¹⁶ See John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, op. cit., p. 4.

One of the major groups of the challenges on the local government systems was caused by the significant modification of the municipal functions.¹⁷ In the following these challenges will be reviewed.

i) The expanding (public) services and the professionalization of the local government administration

The traditional local government leadership system which was based on laymen leaders had not enough capacity to effectively provide the expanding and – because of the technical and social development – even more complex (public) services.¹⁸ *Specific expertise* has been needed for the appropriate level of the provision of these – even more complex – services, thus the role of the actual managers of the services necessarily has increased.¹⁹ These people have belonged to the *professional staff* (*'bureaucrats'*) employed by the municipalities. Because the professional administrators – depending on the public (civil) service system of the countries – are more or less independent from the (local) politics, therefore they could not be controlled by the traditional instruments of the political responsibility. The elected and typically laymen leaders were responsible to their voters.²⁰

The role of the bureaucrats was appreciated by their *expertise*, because the decision-making of the elected laymen local leaders was based on the framework which was prepared by these professional staff. Because bureaucratic elements became the central element of the decision-making, the democratic legitimacy of the local government was weakened.²¹

These dilemmas have strong affect on the structure of the decision-making bodies and process, on the executive organs and on the relationship of the

¹⁷ See Hans NEUHOFFER, op. cit., p. 239.

¹⁸ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 243.

¹⁹ See Carlos R. ALBA and Carmen NAVARRO, *'Mayors and Local Administrators: A Puzzling Relationship.'* In: Henry BACK, Hubert HEINELT and Annick MAGNIER, *'The European Mayor: Political Leaders in the Changing Context of Local Democracy'*, Wiesbaden: VS Verlag für Sozialwissenschaften, 2006, p. 287.

²⁰ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 242.

²¹ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., pp. 243-244.

elected (political) leaders and the professional (bureaucratic) staff of the municipalities.

ii) The increasing cost and the economy of scale of the services

The social expectations of the public services have been changed by the accelerating technical and scientific development. Therefore the provision of these benefits needs more resources.²² Although these phenomena could be observed during the era of '*Les Trentes Glorieuses*' these changes have gained in the 1980s and 1990s.

The providers of the services were burdened by the increasing costs. Thus the founding of these benefits became an even significant problem. A revaluation of the economy of scale was caused by this transformation because the more expensive task performance needed for more material resources. The pre-existing *integration (concentration) tendencies* were strengthened by these changes.

A new challenge was raised by the emerging concentration: how can provide a sufficiently effective service which is a grassroots and local.

The attempts to solve this dilemma were determined the spatial reforms of the local government systems in the end of the 20th century.

iii) Local public services which implement basic rights?

During '*Les Trentes Glorieuses*' the economic, social and cultural rights were institutionalized in the (national) constitutions. This was an important reason of the transformation of the municipal service systems.²³ The public

²² Thus the health expenditures were increased in the period between 1990 and 2000 in all Western welfare states regardless of which welfare model follows. See Josef SCHMID, '*Wohlfahrtsstaaten im Vergleich*', Opladen: Leske + Budrich, 2002, p. 273. Similar phenomenon could be observed in the field of education from 1980 to 1994 the education expenditures per capita were doubled worldwide: from 126 USD per capita to 252 USD per capita. See Stephen P. HEYNEMAN, '*International Education: A Retrospective*'. In: *Peabody Journal of Education*, 2000, no. 1., p. 45.

²³ See Dennis M. DAVIS, '*Socio-economic rights: has the promise of eradicating the divide between first and second generation rights been fulfilled?*' In: Tom Ginsburg, Rosalind Dixon,

services provided by the municipalities are actually the realization of these rights. Thus the social security is prevailed – partly – by the municipal social benefits the right to education is materialized by the municipal schools the right to health is implemented by the municipal health services.

Thus these services can be observed as institutions which implement the basic rights. Most of the modern democratic constitutions declare the right to equal treatment and the ban of discrimination.²⁴

The right to local government is declared mostly by the national constitutions, as well. A little dilemma is caused by this model of regulation.²⁵ Namely these local public services should be provided equally and accessible for the (local) residents, although the local communities should have some freedom in the field of the regulation and the provision of the services because of their right to local government. This dilemma was one of the major challenges to the regulation of the constitutional status of the local communities.

b) The transformation of the democratic systems

During the 1980s the traditional representative democracies changed – partially related to the transformation of the service system, partially by the result of other social processes. One of the major elements of the transformation was the increasing criticism of the representative model which aimed the reinforcement of the elements of the direct democracy. These movements had a strong impact on the organization of the municipalities, as well.²⁶

'Comparative Constitutional Law', Cheltenham (UK) – Northampton (MA): Edward Elgar Publishing, 2011, pp. 521-522

²⁴ See LEGÉNY Krisztián, *'Összehasonlító alkotmányjog'* [Comparative Constitutional Law], Budapest: CompLex Kiadó, 2006, p. 374.

²⁵ See Sergio BARTOLE, „Internal Ordering in the Unitary State”. In: Michel ROSENFELD and András SAJÓ, *'The Oxford Handbook of Comparative Constitutional Law'*, Oxford: Oxford University Press, 2012, pp. 615-617.

²⁶ See Theo SCHILLER, *'Local Direct Democracy in Europe – a comparative overview'* In: Theo SCHILLER, „*Local Direct Democracy in Europe. Direct Democracy in Modern Europe*”, Wiesbaden: Springer VS Verlag für Sozialwissenschaften, 2011, pp. 14-15.

At the end of the 20th century transparent, clear and personal local political responsibility models were needed by the local voters. The traditional collegial leadership was not able to meet these needs therefore the role of the collegial and personal leadership was changed during this period.²⁷

Those movements were related to the transparency of the local government administration which aimed the institutionalization of grassroots, accessible and (better) controlled structures in the local government management.²⁸

c) The transformation of the relationship of local (subnational), national and supranational administration

The transformation of the traditional nation-state in Europe had a strong impact on the European local government systems. The nation-states were under dual pressure: the traditional role of the states were transformed and limited by the advance of the European integration, the emergence of the European Union and the supranational administration ‘*from above*’ and by intensifying the decentralization ‘*from below*’.

The supranational system of the European Union was a great challenge to the local government systems, as well. The freedom of choice of the municipalities was limited by the mandatory regulations of the *community law* – not only by the national law. On the other hand the declaration of the principle of *subsidiarity* in the Treaty on European Union in 1991 allowed institutionalizing the guarantees of local government in the supranational community law, as well.²⁹

²⁷ See Tomas BERGSTRÖM, Alberto GIANOLI and Nirmala RAO, ‘*Strong Leadership and Local Democracy: Rivals or Potential Allies?*’ In: Linze SCHAAP and Harry DAEMEN, ‘*Renewal in European Local Democracies. Puzzles, Dilemmas and Options*’, Wiesbaden: Springer VS Verlag für Sozialwissenschaften, 2012, pp. 133-134.

²⁸ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 244, Ann O’M. BOWMAN and Richard KEARNEY, op. cit., p. 281, and Michael HAUS and David SWEETING, ‘*Mayors, Citizens and Local Democracy*’. In: Henry BÄCK, Hubert HEINELT and Annick MAGNIER, ‘*The European Mayor. Political Leaders in the Changing Context of Local Democracy*’, Wiesbaden: VS Verlag für Sozialwissenschaften, 2006, pp. 152-156.

²⁹ See Maik MÖLLER, ‘*Subsidiaritätsprinzip und kommunale Selbstverwaltung*’, Baden-Baden: Nomos, 2009, pp. 237-241.

If we look at the changes of the services provision, the democratic models and the role of the subnational, national and supranational administration during the last three decades, it could be highlighted, that these challenges and the answers have been transformed the organization, administration and leadership of the municipalities. These major changes will be considered in the following.

II. Answers to the challenges: the main directions of the changes of the municipal organization in the last decades

Significant transformation of the municipal organization was induced by the above written changes. The general framework of the alteration of the local government administration will be reviewed in the following.

1) Changes of the scope of the right to local government

During ‘*The Glorious Thirty*’ the right to local government was declared by the majority of the constitutions of the Western and Central European democracies. The scope of the right to local government was the general clause of ‘*local public affairs*’. The process of this constitutional institutionalization has continued after 1975, because the service provision by municipalities was a more flexible method than the centralized, central government based forms.³⁰ Thus in France – in the origin of the centralized Napoleonic public administration – a local self-government reform was occurred, and the right of the territorial units to local government was declared at the Millennium although the general clause has not been detailed regulated by the constitution.³¹ After the change of regimes in the former Communist countries in Eastern and Eastern Central Europe the constitutions of these new democracies declared that the local communities

³⁰ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 245.

³¹ After the Amendment of the Constitution in 2003 the state structure of the Republic of France is declared as decentralized. See John BELL, Sophie BOYRON, Simon WHITTAKER, ‘*Principles of French Law*’, Oxford: Oxford University Press, 2008, p. 155.

- which were formerly only the local agencies of the central government³²
- have the right to local government.³³

Although formally the decentralization has been strengthened, a reverse process could be observed. The municipal public services are practically the implementation of basic social, economic and cultural rights therefore centralization tendencies has been occurred in the field of the service provision. The task performance by the central government or by the local agencies of the central government has not been typically implied by these centralization tendencies.³⁴ The central government would like to strengthen its position without the assumption of the duties. Therefore the *central regulation of the municipal services* has been widely extended.³⁵

The constitutional basis of this transformation was the right of the central government to regulate the professional rules of the service provision because these benefits are implementing services of several basic constitutional rights. Typically the central governments have the right to pass decrees on the detailed rules of the provision.

In the Anglo-Saxon countries – where the local government model is based on the *ultra vires* principle – the performance of the tasks of the local government can be defined by the central legislature. The '*direction by regulation*' was widely recourse in the United Kingdom by the conservative (tory) government in the 1980s therefore the impact of the central government significantly strengthened.³⁶

³² See Samuel HUMES, '*Local Governance and National Power: A Worldwide Comparison of Tradition and Change in Local Government*', New York – London – Toronto – Sydney – Tokyo – Singapore: Harvester Wheatsheaf, 1991, p. 81.

³³ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 245.

³⁴ Although the assumption of the duties has not been applied by the majority of the modern democracies, Hungary widely 'nationalized' the local government services during the administration reforms in 2010-2013. See HOFFMAN István, '*A járás helye a magyar közigazgatás rendszerében*' [The role of the district in the system of the Hungarian public administration], Magyar Közigazgatás, 2012, no. 1. pp. 30-31.

³⁵ See Elke LÖFFLER, '*The Administrative State in Western Democracies*'. In: B. Guy PETERS and Jon PIERRE, *Handbook of Public Administration*, London: SAGE, 2003, p. 485.

³⁶ David WILSON and Chris GAME, '*Local Government in the United Kingdom*', London: Macmillan, 1998, pp. 108-109 and Steve LEACH: '*Conclusion: scenarios for change*'. In: S. LEACH, H. DAVIS and ASSOCIATES, '*Enabling or Disabling Local Government*', Open University Press: Buckingham – Philadelphia, 1996, p. 160.

The continental local government systems allowed this type of central influence, as well. First of all the constitutional regulation on right to local government and on the local public affairs is typically short and general, thus the central legislation has a widely power to define these concepts. Other solution is when the constitution declares, that the local communities have the right to local government ‘*within the law*’.³⁷

Thus the central legislations (including the implementing decrees of the central governments, as well) have widely regulatory powers in the provision of the municipal public services. In the federal countries the federation and the member states have these competences.³⁸

The freedom of the municipal service provision choice has been significantly diminished by the strengthening of the central regulation: the detailed regulations of the various acts and implementing decrees did not allow making local decision relatively free of outside influence. Because the free decision making in local public affairs is the core of the local government, these regulatory solutions could enable the central governments to render the local government – without the formal liquidation of them. The formal possibility was given, but it was excluded by the decisions of several European constitutional courts.³⁹ Although the core areas of the local government has been effectively defended by the constitutions and by the constitutional courts, the diminishing of the local decision making became such significant, that the municipalities of several European countries are described by several authors as ‘*implementing agencies of the central*

³⁷ See Samuel HUMES, op. cit., p. 58.

³⁸ Thus the role of the federal and (member) state legislation have strengthened in the field of municipal social policy. See Rainer PITSCAS and Detlef MERTEN, ‘*Sozialverwaltung im Reformprozeß. Verfassungsrechtliche und verwaltungswissenschaftliche Studie zur Modernisierung der Sozialverwaltung am Beispiel Nordrhein-Westfalens*’, Berlin: Duncker & Humblot, 1997, pp. 27-28.

³⁹ In Germany the Federal Constitutional Court (*Bundesverfassungsgericht*) declared in the Rastede decision that the central regulation should not divert the core areas of local government. See Rastede BVerfGE 79, 127.

*government*⁴⁰ or the new millennium is described as the '*fall of the local government*'.⁴¹

Although these opinions seem to be radical it is an undeniable fact that *the autonomy of the local communities has been significantly eroded by the need for the equal and single service provision.*

2) The transformation of the local decision-making

The rules on the decision-making of the local government have been influenced by the changes of the public service provision and management and by the transformation of the democracy concept of the modern democracies.

One of the major elements of the changes was that the provision and management of the *public services* became more and more complex. The performance of the expanding municipal tasks needed increasing professional skills. In addition, the problems were to be solved quickly and operatively.⁴² The local government administration had to comply with these requirements although in the traditional local government administration the councils were the dominant bodies, whose members were laymen not professional bureaucrats.⁴³ This traditional, council-centred model could not fully meet the challenges therefore significant transformations have been occurred in the local government administration.⁴⁴

⁴⁰ According to Jens Blom-Hansen and Anne Heeager the freedom of the Danish local governments in the provision of the local public services has significantly diminished as a result of the strong central regulation. Therefore the municipalities became autonomous local implementing agencies of the central governments. See Jens BLOM-HANSEN and Anne HEEAGER, op. cit., p. 238.

⁴¹ See Harald BALDERSHEIM and Lawrence E. ROSE, op. cit., p. 304.

⁴² See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 242.

⁴³ See Tomas BERGSTRÖM, Alberto GIANOLI and Nirmala RAO, op. cit., pp. 120-121, Carlos R. ALBA and Carmen NAVARRO, op. cit., p. 288 and Bas DENTERS, '*Duo or Duel? The Relations Between Mayors and Councils in Democratic Local Government*'. In: Henry BÄCK, Hubert HEINELT and Annick MAGNIER, '*The European Mayor. Political Leaders in the Changing Context of Local Democracy*', Wiesbaden: VS Verlag für Sozialwissenschaften, 2006, pp. 272-273.

⁴⁴ See Poul Erik MOURITZEN and James H. SVARA, '*Leadership at the Apex. Politicians and Administrators in Western Local Governments*'. (Pittsburgh: University of Pittsburgh Press, 2002, pp. 23-25.

One of the major changes was the *transformation of the administrative organization and its leadership*, which will be examined separately. It should be highlighted that this transformation has strengthened the executive body of the local government, especially the leader of this executive organ and *significantly diminished the power and influence of the councils*.⁴⁵

d) The emerging role of the (council) committees in order to the grassroots and operative decision making

The decision making mechanisms of the collegial bodies was significantly transformed by the municipal organization law. Especially *the role of the (council) committees emerged among the collegial bodies*. On the one hand, the decision making process of the large councils was not enough operative therefore to the councils subordinated ordinary committees with general powers were evolved by the municipal regulation of several states – especially by the municipal law of the majority of the German provinces (*Länder*). These bodies have been responsible for a wide range of decision making and administrative control tasks. Therefore these bodies are described by the German administrative jurisprudence as *intermediate municipal organs (Zwischenorgane)*.⁴⁶ Not only committees with general powers have been evolved: in several countries the sectorally divided council committees have been emerged, as well.⁴⁷

A special type of the local government by committees is the government by *the units in the part of the settlements*. The institutionalization of the units in the part of the settlements was associated with the merging of the

⁴⁵ See Henry BACK, '*The institutional setting of local political leadership and community involvement*'. In: Michael HAUS, Hubert HEINELT and Murray STEWART, '*Urban Governance and Democracy. Leadership and community involvement*', London – New York: Routledge, 2005, pp. 82-84.

⁴⁶ Thorsten Ingo SCHMIDT, '*Kommunalrecht*' [Municipal Law], Tübingen: Verlag Mohr Siebeck, 2011, pp. 152-153.

⁴⁷ Thus in the United Kingdom the sectorally divided committees became responsible for the local (political) control if the sectorally divided departments of the local governments. Thus the local education authorities are (politically) controlled by the education committees of the county or unitary council which bodies exercise the powers in the name of the council. See John FORD, Mary HUGHES and David RUEBAIN, '*Education Law and Practice*', Bristol: Jordans, 2005, p. 10.

settlements in the Western and Northern European municipal regulations: the formerly independent municipalities became special, committee character bodies of the merged settlement or such bodies were developed by the local communities.⁴⁸ Similarly the administrative bodies in the part of the settlements were evolved by the transformation of the committee system in the United Kingdom, as well.⁴⁹ These collegial bodies are institutionalized by the Municipal Codes (*Gemeindeordnungen*) of the German *Länder* – especially in the metropolitan municipalities (with more than 100 000 inhabitants) and in the merged settlements.⁵⁰ These units can be considered as the organs of the (settlement) municipalities: they have not any independent decision making powers, and they have not the right to self-government.

e) Professional politicians instead of laymen (?)

A new transformation was caused by the expanding responsibilities of the local government: the management of these tasks needed specific skills and significant time investment. A solely lay council could not have enough specific, professional skill or enough time to make the effective decisions. This problem was sufficiently important especially in the large municipalities. Thus lack of expertise and enough time to prepare the decision of the councilmen and councilwoman the role of the professional (bureaucratic) administrative organs emerged although the formal decisions were made by the councils.⁵¹

The administrative (bureaucratic) organs have not any democratic legitimacy therefore a demand has appeared to strengthen the effective decision making role of the councils. Thus it was allowed in several European countries, that the lay councilmen (and councilwomen) position

⁴⁸ In Sweden the local communities developed part of the settlement units under the constitutionally recognized freedom to organize of the self-governments. Thus the differentiated committee system of the Swedish local governments was divided not only sectorally but also on territorial basis. See Anders LIDSTRÖM, 'Sweden: Party-dominated Subnational Democracy Under Challenge?' In: John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, 'Oxford Handbook of Local and Regional Democracy in Europe', Oxford: Oxford University Press, 2011, p. 276.

⁴⁹ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 244.

⁵⁰ See Alfons GERN, op. cit., pp. 398-400.

⁵¹ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 243.

could be transformed into part-time or full-time posts.⁵² Thus the former lay local government representatives – especially the members of the councils of the larger settlements and the intermediate (county) level local government – have become mainly professional politicians.⁵³

f) The instruments of the local direct democracy

As I have already indicated, the democratic decision making of the local government has become a central element of the organizational changes from the 1980s taking into account the broadening of the municipal tasks. In connection with the above written in this period has occurred the voters need for the instruments of direct democracy in Europe.

Although the representative democracy has not been replaced by a new model based on the direct democracy,⁵⁴ direct democratic instruments have been emerged in the municipal law of the majority of the European countries.⁵⁵

Such a direct democratic institution is the mandatory (exceptionally facultative) *local referendum*, in several countries the *recall election*⁵⁶ of

⁵² In the early 1990s the part-time or full time offices of the councilmen and councilwomen were allowed by the French, Swedish and Polish municipals. See Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 243. The Local Government Act 2000 allowed the honorarium of several councilmen and councilwomen in the United Kingdom. The higher honorarium of the council group leaders was allowed by the same act. See J. A. CHANDLER, 'Local government today', Manchester: Manchester University Press, 2001, p. 133. Similarly the Hungarian local government representatives could receive honorarium. (See Imre VEREBÉLYI, 'Az önkormányzati rendszer magyarázata' [Commentaries on the Local Government System], Budapest: Közgazdasági és Jogi Könyvkiadó, 1999, p. 241 and NAGY Marianna and HOFFMAN István (eds.), 'A Magyarország helyi önkormányzatairól szóló törvény magyarázata' [Commentaries on the Act on Local Self-Governments of Hungary], Budapest: HVG-Orac, 2012, p. 133.

⁵³ See J. A. CHANDLER, op. cit., p. 134.

⁵⁴ See Theo SCHILLER, op. cit., p. 14-15. and Zoltán JÓZSA, 'Polgármesterek az uniós tagállamokban: modellvariációk' [Mayors in the Member States of the European Union: Variation of the Models]. In: László KÁKAI, '20 évesek az önkormányzatok. Születésnap, vagy halotti tor?' [20 Years Old Local Government. Birthday or Funeral?], Pécs: Publikon Kiadó, pp. 205-206.

⁵⁵ See Martin BURGI, 'Kommunalrecht' [Municipal Law], München: Verlag C. H. Beck, 2012, p. 123.

⁵⁶ Thus the recall election of the mayor is allowed by several Municipal Codes of the German provinces. The recall election of the mayor of Duisburg after the 2010 Love Parade disaster received wide press coverage. See Martin BURGI op. cit., p. 169.

the mayor or the council or the *local citizen's initiative*.⁵⁷ The *mandatory public hearings* can be described as one of these direct democratic legal institutions, as well.⁵⁸

The former, council-centred municipal organization has been transformed significantly by these changes. Although the representative bodies are responsible for the strategic decision making and for several operative decisions the personal leader and the council committees have been strengthened. The gradual displacement of the councils from the operative decision making has been resulted by these changes. The direct democratic instruments diminished the hegemony of the representative bodies in the strategic decision-making, as well.

3) The change of the administrative organization of the local government

The leadership of the administrative bodies of the local government was in the focus of the organizational changes of the municipalities. As I have written above, the growing complexity of public services needed more professional skills, which played a central role in the provision of these benefits. On the other hand, the democratic legitimacy of the service provision should be guaranteed. Thus these tasks should be managed by officers who are accountable to the local communities. Mainly the administrative organs of the local government have been transformed by these challenges.

a) Effective provision of the public services and the organizational changes for the efficiency

The effective provision and management of the public services became one of the central elements of the reforms induced by the movement of the *New Public Management* in the 1980s and 1990s in Western Europe. Efficiency was initially interpreted as *economic efficiency*, the quality management of the benefits became a significant part of the reforms in the

⁵⁷ See Theo SCHILLER, op. cit., p. 16-17.

⁵⁸ Thus in Hungary the representative bodies should hold one session as public hearing. See NAGY Marianna and HOFFMAN István: op. cit., p. 212.

1990s.⁵⁹ The efficiency in the service provision caused several changes of the administrative organizations, which will be reviewed in the following.

i) ‘Leaner State’ (‘schlanker Staat’): application of new management methods in the provision of public services

The central element of the New Public Management reforms was the application of the new management methods, which were especially used by the business management. These new methods mainly replaced the traditional public management methods of the public law.⁶⁰ Although the effect of the New Public Management reforms prevailed differently in the European countries, it is a common element, that *in several cases the traditional public management methods – which were based on the hierarchical administration and were regulated by the public law – were replaced by the new management elements.*

Thus the regulation of the *Anglo-Saxon* countries tried to involve the private capital, if the given service could have a real market. The main instrument of this involvement was the expansion of the *competitive compulsory tendering*.⁶¹ In addition, significant privatization took place in these countries. Where a real market did not work, there quasi markets and quasi competition have been intended to create by mainly administrative and regulative tools.⁶²

In *France* and in the countries which follow the Latin (Napoleonic) administrative model, the central and local governments tried to strengthen the completion by the formerly widely spread institutions of the *public*

⁵⁹ See HORVÁTH M. Tamás, ‘Közmenedzsment’, [Public Management], Budapest – Pécs: Dialóg – Campus Kiadó, 2005, p. 30.

⁶⁰ See HORVÁTH M. Tamás, op. cit., p. 33.

⁶¹ See Steve LEACH, op. cit., p. 160 and Andrew ARDEN, Scott COLLINS and Jonathan MANNING, ‘Local Government Constitutional and Administrative Law’, London: Sweet & Maxwell, 1999, p. 574.

⁶² Although it was a central government reform a good example for the creation of the quasi markets and the quasi competition was the 1990 National Health Service reform in the United Kingdom, when the GPs and the GP Fundholdings intended to create a competition between the hospitals. See Kieke OKMA, ‘Health care and the welfare state: two worlds of welfare drifting apart?’ In J. BERGHMAN, A. NAGELKERKE, K. BOOS, R. DOESCHOT, and G. VONK, ‘Social Security in Transition’, The Hague–London–New York: Kluwer Law International, 2002, p. 235.

contracts. These bilateral legal transactions regulated by the public law replaced the unilateral, hierarchical administrative tools to make a more efficient provision of the public services.⁶³

In *Germany* and in the German speaking countries (and in Netherlands,⁶⁴ as well) mainly *formal privatization* occurred based on the *New Governance Model* ('*das neue Steuerungsmodell*'). Thus the former public institutions – governed by the public law – were transformed to companies governed by the private law. This reform was based on the concept of the 'Entrepreneur Town Hall' ('*Unternehmen Rathaus*'). New corporate municipal utilities emerged which were not managed by the instruments of the private law. Thus the management of these new companies was based on the ownership rights of the local government (investment management – *Beteiligungsmanagement*)⁶⁵.

These instruments caused the large-scale transformation of the former administrative routine because in the local government new private methods evolved while the dominance of the public methods continued. Thus the *co-operative companies*, the *holdings of the municipalities* were developed – especially in the German local government system – while the traditional public institutions (governed by the public law) continued to operate⁶⁶. Also new administrative arrangements have been appeared by the *Public Private Partnerships (PPPs)* in which the municipalities took part, as well.

⁶³ See Nadine POULET and Gibot LECLERC, '*Droit administratif. Sources, moyens, contrôles*', Paris : Bréal, 2007, pp. 137-138.

⁶⁴ The first experiment of the new method was applied in the Dutch town of Tilburg (Horváth M. 2005: 59-60).

⁶⁵ See Michael RONELLENFITSCH, '*Voraussetzungen und historische Entwicklung privatwirtschaftlicher Betätigung der Gemeinden*' [Emergence and historical development of private economic activities of the municipalities]. In: Werner HOPPE and Michael UECHTERITZ, '*Handbuch Kommunale Unternehmen*' [Handbook of Municipal Companies], Köln: Verlag Otto Schmidt, 2007, pp. 11-13.

⁶⁶ See Jörg SIEGELS, '*Konzernrecht kommunale Unternehmen*' [Law of the groups of municipal companies], In: Werner HOPPE and Michael UECHTERITZ, '*Handbuch Kommunale Unternehmen*' [Handbook of Municipal Companies], Köln: Verlag Otto Schmidt, 2007, p. 503.

The inter-municipal organizations are described as such a new method of local governance by several authors⁶⁷ but this cooperation will be presented among the instruments solving the economy of scale problems of the local government systems.

ii) The strengthening of the role of the administrative professionals (executive officers) in the municipal organization

As I have formerly indicated the informal role of the administrative professionals (executive officers) has strengthened in the local government decision making by the increasing complexity of the public services and the new administrative and management methods which needed more professional skills. The formal decisions have been made by the – typically – lay councils (or council commissions) but the councils – which mainly have had not enough professional knowledge – actually have had a formal control over the local government submissions prepared by the administrative (executive) staff of the municipal organization. Thus the actual democratic legitimacy of the local government decisions has been weakened.⁶⁸ This change became a challenge as well, which also has a back effect on the organization.

b) The strengthening of the politician leader of the executive organization: the rise of the mayors

The role of the mayor in the local government systems has been significantly influenced by the municipal organizational changes of the last decades. In summary the greatest winners of these changes became the mayors, because *their powers have been extended*.

i) More effective and operative executive: the strengthening of the powers of the mayor connected to the council

⁶⁷ See Johannes HELLERMANN, 'Handlungsformen und Handlungsinstrumentarien wirtschaftlicher Betätigung' [Forms and tools of economic activities]. In: Werner HOPPE and Michael UECHTERITZ, 'Handbuch Kommunale Unternehmen' [Handbook of Municipal Companies], Köln: Verlag Otto Schmidt, 2007, pp. 176-177.

⁶⁸ See Gérard MARCOU and Imre VEREBÉLYI, op. cit., pp. 244-245.

As I have formerly mentioned, the large collegial decision making bodies could not meet the requirements of the changing local public administration therefore their tasks and role have transformed. Primarily the operative decision making was slowed by the collegial decision making thus the personal leadership of the local government has been strengthened to increase the efficiency of the local administration⁶⁹.

These changes were particularly in those systems evident where the council type, collegial leadership local government was the dominant type. Thus one of the main element of the Labour local government reforms in the United Kingdom was the strengthening of the personal – possible directly elected – leader in the former ‘cabinet’ type British local executive system.⁷⁰ Similarly the municipal forms – especially the *strong mayor form* – with enhanced power of the mayors are widely used by the state local government systems of the United States of America in the last decades.⁷¹

The role of the mayor has been strengthened significantly in the German speaking countries, as well. Thus the formerly diversified provincial municipal constitutions (*Kommunalverfassungen*) changed in the 1990s. The Southern German Council Form (*süddeutsche Ratsverfassung*) – which was strongly influenced by the American strong mayor form – became the dominant local government model.⁷² Similarly the mayor was significantly strengthened by the new Austrian provincial Municipal Codes which were passed during the 1990s.⁷³ Therefore the municipal reforms during the last decades in the German speaking countries are characterized by the administrative sciences as the completion of the *dual* local government executive system.⁷⁴

⁶⁹ See See Poul Erik MOURITZEN and James H. SVARA, op. cit., pp. 23-24.

⁷⁰ See Andrew ARDEN, Christopher BAKER and Jonathan MANNING, ‘*Local Government Constitutional and Administrative Law*’, London: Sweet & Maxwell, 2008, pp. 62-66.

⁷¹ See Ann O’M. BOWMAN and Richard KEARNEY, op. cit., pp. 262-264.

⁷² See Jörn IPSEN, ‘*Die Entwicklung der Kommunalverfassung in Deutschland*’. In: Mann, Th. & Püttner, G. (eds.): *Handbuch der kommunalen Wissenschaft und Praxis*. Berlin – Heidelberg: Springer Verlag 2007, pp. 575-576.

⁷³ See Hans NEUHOFFER, op. cit., pp. 183-184.

⁷⁴ See Jörn IPSEN, op. cit., p. 623.

Because the powers of the mayors have increased the method for the fill of the mayoralty has been changed. In order to provide a greater democratic legitimacy the mayors became widely *directly elected instead of the former indirect elections* where the mayors were elected mainly by the councils. Although typically the directly elected mayors have more tasks and powers, the indirect election of this office does not exclude the wide responsibilities. A good example is the French mayor (*maire*) who is elected by the council in the settlements more than 3 500 inhabitants but these officers are one of the strongest local personal municipal leaders.⁷⁵

The status of the mayors was changed, as well: in this period these officers became increasingly full-time paid, professional local politicians. A full-time mayor has – besides the broad democratic legitimacy – enough possibility to *control the professional, bureaucratic executive staff* of the local government.

iv) The strengthening of the political control over the municipal executive staff

The power of the mayor as political leader has significantly increased related to the professional executive staff of the local government since the end of the 20th century. As I have formerly written, the role of the professional administrators was strengthened by the increasing complexity of the public services and the evolvement of the new management forms. These professional administrators have not democratic legitimacy, they worked as the employees appointed for an indefinite period of time.

Because of the importance of their tasks the monitoring of their activities by the citizens became a key issue. The enhanced council committees were the first attempt to create an effective monitoring and control model. An alternative solution was the increasing influence of the mayor on the professional executive staff. This model has been evolved in those countries where there were no traditions of the strong personal leadership of the local government.

⁷⁵ See Nadine DANTONEL-COR, '*Droit des collectivités territoriales*', Paris: Bréal, 2007, p. 47.

In the Napoleonic local government systems the leadership of the executive staff was based on the strong mayor as local politician.⁷⁶ Similarly the mayor was the most predominant organ in the Southern German council form, as well.⁷⁷

The traditional British model was different: the mayor was elected indirectly (by the council) and mainly for a short period (for one or two years) and he or she was responsible for the presidency of the council and for several ceremonial tasks. During the 1990s the mayor became more important organ of the British local government. Thus the directly (by the citizens) elected role of the cabinet leader has evolved. The cabinet leader could be the president of the local government council, as well. Although the form of the directly elected cabinet leader or mayor has been encouraged by (both the Tory and Labour) central governments the traditional cabinet form continued as an important form. In this traditional model the sectorally divided administrative units (called as departments, authorities) are directed by leaders who are elected by the council. These leaders form the local government cabinet.⁷⁸ The South German council model which is based on the leading role of the mayor widespread in the German *Länder* during the local government reforms in the 1990s. The impact of this form was significantly on those provinces, which did not choose this model: the role of the – now directly elected – mayor was strengthened in those *Länder* where the executive staff was led by a professional administrator. Thus a dual executive system was evolved in these provinces.⁷⁹

Thus the possibility of the new local government leadership was created by the above written changes. The executive staff of the local government in several European countries has been directed by a directly elected – who

⁷⁶ See Nadine DANTONEL-COR, op. cit., pp. 48-49.

⁷⁷ See Martin BURGI op. cit., p. 168.

⁷⁸ See Andrew ARDEN, Christopher BAKER and Jonathan MANNING, op. cit., pp. 64-66.

⁷⁹ See Thorsten Ingo SCHMIDT, op. cit., pp. 148-149. A good example is the local government reform in North-Rhine – Westphalia where the mayors became a directly elected full-time political leader in the towns, and their powers have been strengthened. Thus they became equal partners of the professional administrators, the city managers (*Stadtdirektor*) and a new, dual executive system has evolved. See Hartmut MAURER, '*Allgemeines Verwaltungsrecht*' [Administrative Law, General Part], München: Verlag C. H. Beck, 2009, p. 575.

could be recall in several cases by a referendum – leader. This leader – who is more and more a full-time officer – is *definitely a local politician*. Thus the provision of the effective democratic control of the local government caused a side effect: *the increasing politicization of the local government executive staff*.⁸⁰ These changes and transformation are typical in those countries where the local government reforms were strongly influenced by the paradigm of *Good Governance*.⁸¹

The challenges on the executive (administrative) staff of the local government caused dual – and reversed – changes. On the one hand the role of the professional executive staff has been strengthened by the increasing complexity of the public services and by the new management forms related to the effective service provision. On the other hand the role of the politician leaders has been strengthened, as well. The enhanced powers of the mayor were related to the effective control of the executive staff and to the operationalization of the local government administration. Thus the politicization of the executive staff has been increased, as well.

4) Changes of the local government spatial structure

The significant changes of the local government spatial structure have been evolved because of the increasing complexity of the public services and the associated economy of scale problems. This transformation was influenced by the intensifying urbanization. Thus conurbations or agglomerations have evolved around the cities and the towns and the urban regions have been strengthened.

The changes of the local government spatial structure can be classified into several groups. There were reforms which intended to *reduce the number of the settlement level units* because the merged (and thus

⁸⁰ See Thorsten Ingo SCHMIDT, op. cit., p. 149 and Gérard MARCOU and Imre VEREBÉLYI, op. cit., p. 243.

⁸¹ These changes and the politicization of the executive staff could be interpreted as an answer to the enhanced professional executive staff created by the New Public Management reforms and an answer to the side effect of these changes which caused as a side effect an ‘organizational hyper proliferation’. See Tom CHRISTENSEN and Per LÆGREID, ‘Governance and Administrative Reforms’. In: David LEVI-FAUR, ‘Oxford Handbook of Governance’, Oxford: Oxford University Press, 2012. p. 264.

large) municipalities could sufficiently provide and organize the primary (exceptionally the secondary) public services. This model was followed radically by the local government reforms of the Scandinavian (Nordic) countries and similar (but less excessive) changes were evolved in several Western and Central European countries.⁸²

An alternative solution was the *strengthening of the intermediate (county) level of the local government* thereby these units could provide the intermediate (secondary) level public services more effectively. In several countries the intermediate level was duplicated thus under and upper intermediate level units were created. This duplication was widely used by the countries of the Napoleonic local government model.⁸³ A similar structure was chosen by the largest German Land, by Bavaria when the Bavarian district (*Bezirk*) which was formerly a territorial agency of the provincial government was transformed to local government.⁸⁴

The third form is the widespread use of the *inter-municipal associations*. Although the administration of these inter-municipal units is more difficult than the executive of the merged settlements or the enhanced intermediate level self-government units, the right to self-government of the settlements is preserved by this solution of the municipal economy of scale problem. In addition, the associated settlements form an

⁸² See HOFFMAN István: 'Az önkormányzatok társulási rendszerének főbb vonásai' [The main characteristics of the inter-municipal associations]. Új Magyar Közigazgatás, 2011, no. 1., pp. 25-27.

⁸³ Thus in France the upper intermediate level which is responsible for the majority of the secondary public services is the region (*région*). The under intermediate level is the county (*département*) which is responsible for the provision of the majority of primary public services. See Antoine DELBLOND, 'Droit administratif', Bruxelles: Larcier, 2009, p. 181. In Spain the upper intermediate level is the regional level autonomous community (*comunidad autónoma*) and the under intermediate level is the county (*provincia*). See Mayte Salvador CRESPO, 'La autonomía provincial en la sistema constitucional español.', Barcelona – Madrid: Fundación Democracia y Gobierno Local – INAP, 2007, pp. 139-140. In Italy the upper intermediate level is the region (*regione*) which has the right to pass (regional) acts and is responsible for the majority of secondary public services. The under intermediate level is the county (*provincia*) which is partly responsible for the complex primary public services and for several non-complex secondary public services. See Elio CASETTA, 'Manuale di diritto amministrativo', Milano: Giuffrè Editore, 2011, pp. 263-265 and 288-289.

⁸⁴ See Martin BURGI op. cit., p. 304.

economically and professionally⁸⁵ effective service provision framework. Not only the number of the inter-municipal association has increased but also the inter-municipal systems became *more differentiated*. Although the municipal law of the European countries regulated one or no more than a few inter-municipal legal institutions until the mid-twentieth century several forms of the inter-municipal cooperation became institutionalized by the new municipal legislation of the past decades. The main reason of the differentiation was the diverse settlement patterns of the countries and the different needs related to this diversity. The traditional inter-municipal associations were made for the cooperation of the small settlements thus they could have enough resources to provide the basic services.⁸⁶ After the municipal reforms new types of inter-municipal associations have evolved in the small and medium size urban regions⁸⁷ and the associations in the metropolitan agglomerations have typically strengthened by these changes.⁸⁸ Thus *diversity* can be observed in the systems of the inter-municipal associations in Europe.⁸⁹ Related to the reform of the inter-

⁸⁵ After the period of the public service reforms influenced by the New Public Management the professional aspects of the service provision and the professional effectiveness became a central element of the service changes. This approach is especially significant in the countries which follow the paradigm of Good Governance. See Niamh HARDIMAN, 'Governance and State Structures', In: David LEVI-FAUR, 'Oxford Handbook of Governance', Oxford: Oxford University Press, 2012. pp. 230-231.

⁸⁶ The German one-purpose inter-municipal association (*Zweckverband*), the multi-purpose inter-municipal association (association of the municipalities – *Gemeindeverband*) in Rhineland-Palatinate, the association based on the integrated executive office (*Amt*) in Schleswig – Holstein and the French multi-purpose association of communities (*communautés de communes*) can be classified as such a 'traditional' inter-municipal associations made for the co-operation of small settlements. See Beate ZIELKE, 'Zwischengemeindliche Zusammenarbeit', Berlin: Erich Schmidt Verlag, 1993. pp. 40 and 52 and Nadine DANTONEL-COR, op. cit., p. 96.

⁸⁷ In France the communities of cities (*communautés de villes*) and in Germany the medium-sized urban neighbourhood associations (*Nachbarverschaftsverband*) can be described as such a small and medium-sized urban inter-municipal association. See Beate Zielke, 'Zwischengemeindliche Zusammenarbeit', Berlin: Erich Schmidt Verlag, 1993. pp. 65 and Nadine DANTONEL-COR, op. cit., p. 102.

⁸⁸ Such a metropolitan inter-municipal associations are the French urban communities (*communautés urban – CU*) and the German metropolitan agglomeration associations, for example the agglomeration association of Frankfurt am Main (*Umlandverband Frankfurt am Main*). See Beate ZIELKE, 'Zwischengemeindliche Zusammenarbeit', Berlin: Erich Schmidt Verlag, 1993. p. 69. and Nadine DANTONEL-COR, op. cit., pp. 86-87.

⁸⁹ Of course, there are exceptions. Thus the regulation on the Hungarian inter-municipal association has been brought into line by the Chapter IV of the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, which recognizes just one form of the inter-municipal associations, the associations with legal personality. The town-centered service provision is preferred

municipal cooperation the new instruments of Urban Governance have been evolved in the European municipal systems. The joint municipality-run companies and the societies (regulated by the private law) of the municipalities can be described as such an institution.⁹⁰

The municipal spatial structure has been significantly transformed by these changes. This modification was in several cases connected with the change of territorial structure of the country or province (merger of settlements, reform of the intermediate level local government). In other cases the transformation of the spatial structure was performed by the inter-municipal associations and by the new instruments of Urban Governance without the change of the official territorial structure.

III. Conclusions

The legal regulation on the organization of the local government has changed in the second half of the 20th century. The different local government models have been challenged by the transformation of the public service systems, by the changes of the perceptions of democracy. Therefore a convergence can be observed in the main trends of the changes of the municipal organization.

Thus the role of the councils has been generally weakened and the role of the council committees has strengthened: the councils have remained as the main strategic decision-making bodies of the local self-governments. The regulation by the central government has been extended. New instruments of the direct democracy have been emerged in the local government systems.

The expansions of the public services – which have become more complex phenomena – have strengthened the influence of the professional

by this new municipal code related to the treatment of economy of scale problems: See HOFFMAN István, 'Differenciált hatáskör-telepítés és városkörnyékiség a helyi-területi igazgatás rendszerében' [Jurisdiction-allocation and Agglomeration in the System of Local and Regional Administration], *Jogtudományi Közlöny*, 2012, no. 4., p. 159.

⁹⁰ See Martin BURGI op. cit., pp. 299-300.

staff of the local communities. As an answer to the emerging role of the professional administrators ('local bureaucrats') the significance of the political control has been increased, especially by the expanding powers and the strong – often by direct elections legitimated – democratic legitimacy of the mayor.

These changes and challenges have impressed the spatial structure of the local self-governments. The institutions against the spatial disparities have been differentiated in the most European countries.

Although a convergence can be observed in the municipal organizational regulation the political background of these changes are sometimes different. The instruments of the consensual local democracy are preferred by several countries (especially in the Nordic states). In other countries the elements of the majoritarian democracy are strengthened by the reforms.⁹¹ The review of the political background of the organizational transformation is beyond the limits of this study therefore it could be analyzed by an independent article.

SUMMARY

Main Trends of the Changes of the Legal Regulation on Municipal Organizations in the Last Decades

ISTVÁN HOFFMAN

The (internal) organisational law of local governments has seen significant changes since the second half of the 20th century. The various local governmental systems faced more or less the same challenges arising from the development of the public services system, changes to the interpretation of democracy and the evolution of post-industrial societies, although not necessarily at the same time, which may be explained, among others, by the fact that the local governmental system was established in some of the

⁹¹ See John LOUGHLIN, Frank HENDRIKS and Anders LIDSTRÖM, *op. cit.*, pp. 17-18.

states only after the change of the economic and social system in 1989-1990. Thus the directions of the structural changes were similar as well, which gave rise to a *uniform trend in the changes of the individual rights of local governments in Europe*. As a result of this, the powers of bodies weakened and central governmental control became stronger in respect of the majority of local governmental rights, direct democratic means appeared and committees gained power as the bodies gradually withdrew to the field of strategic decision-making. With public services becoming more extended and complex, the specialist management apparatus gained importance everywhere, which gave rise in the majority of the states to the strengthening of the (political) control over the system mentioned above, including the increasing role of the mayors and the politicization of the local governmental control. Although not in the same ways, the means aimed at eliminating the unevenness in the local governmental structures appeared in every country.

RESÜMEE

Wichtige Änderungstendenzen der letzten Jahrzehnte in der rechtlichen Regelung der örtlichen Verwaltung

ISTVÁN HOFFMANN

Das (interne) Organisationsrecht der Selbstverwaltungen erfuhr ab der zweiten Hälfte des 20. Jahrhunderts bedeutende Veränderungen. Die unterschiedlichen Selbstverwaltungssysteme standen mit den Veränderungen des Kommunaldienstsystems, der Auffassung von der Demokratie und der Herausbildung der neuen, postindustriellen Gesellschaften vor beinahe identischen Herausforderungen, wenn auch zeitlich verschoben. Diese zeitliche Verschiebung war teilweise darauf zurückzuführen, dass in bestimmten Staaten der Ausbau des Selbstverwaltungssystems nur im Anschluss an die wirtschaftliche und gesellschaftliche Wende des Jahres 1989/90 erfolgt war. So *waren auch die Richtungen der organisatorischen*

Veränderungen ähnlich. Dies führte dazu, dass *auch die Veränderungen bestimmter europäischer Kommunalrechte in dieselbe Richtung wiesen.* So wurden bei der Mehrheit der Kommunalrechte die Wirkungskreise der Körperschaften geschwächt, die zentrale staatliche Regelung wurde stärker, es erschienen die direkten demokratischen Mittel und mit dem allmählichen Rückzug der Körperschaften in den Bereich der strategischen Entscheidungsfindung erstarkten die Kommissionen. Die Entfaltung und die steigende Komplexität der Kommunaldienste brachte überall die Erhöhung der Bedeutung des Fachverwaltungsapparats mit sich, und dies ging in den meisten Staaten mit dem Erstarken der (politischen) Kontrolle über das obige System einher, somit mit der zunehmenden Rolle der Bürgermeister und der Durchpolitisierung der Leitung der Selbstverwaltung. Wenn auch in den einzelnen Ländern auf unterschiedliche Weise, doch überall erschienen diejenigen Mittel, die die Ungleichmäßigkeiten der Raumstruktur der Selbstverwaltungen beheben sollten.